IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.356 of 2007

The Commissioner of Income-tax,
Tamil Nadu-VII, Chennai. ..Appellant

Vs

M/s.Chensing Ventures,
11/1, Ellayamudali Street,
Chennai-600 081. ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Chennai in I.T.A. No.1999/Mds/2003 dated 10.07.2006 for the assessment year 2002-03 and Lr. dated 25/8/2003in IT/Appeal No.73/2003-2004 from the Commissioner of Income tax (Appeals) IX Chennai -34 and the assessment order of the Income Tax Officer, dated 4.4.2003 in AACPC 4889R Ward VI (3) Chennai.

For Appellant : Mr.J.Narayanaswamy

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'A', Chennai in I.T.A. No.1999/Mds/2003 dated 10.07.2006, raising the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that, and direct the assessing officer to compute the income, business loss has to be set off against the other income, even though the assessee surrendered the income at the time of survey under section 133A of the Income-tax Act, 1961?"

2. The brief facts leading to the above substantial question of law are as under:

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The assessee is a firm consisting of two partners. The firm is carrying on business of purchase and sale of steel scraps both locally and in the Mid Sea. The relevant assessment year is 2002-2003 and the corresponding accounting year ended on 31.03.2002. A survey under Section 133A of the Income-tax Act ("Act" in short) was conducted by the Department on 18.03.2002 in the presence of one P.Chandrasekar of the firm. During the course of survey, it was noticed that the assessee has made cash payments to the bank to the tune of Rs.30,00,000/-. When it was pointed out to the assessee, he was only able to explain the source for cash payment to the bank to the extent of Rs.1.50 lakhs and for the balance amount of Rs.28.50 lakhs, the assessee was not able to offer any satisfactory explanation. However, the assessee had agreed to offer the sum of Rs.28.50 lakhs as income from undisclosed source for the assessment year 2002-2003. The assessee filed Return of income for the said assessment year on 31.10.2002 admitting a business loss of Rs.11,95,384/- and admitting an income of Rs.28,50,000/- under the head "income from undisclosed sources". The assessment was taken up for scrutiny and notice under Section 143(2) was issued on 31.10.2002. The assessment was completed by the Assessing Officer as under:-

| | |
|---|---|
| "Business loss admitted by the assessee | Rs.11,95,384 |
| Less: Disallowance as agreed by the assessee stated above: | Rs. 3.75,000 |
| Net loss: | Rs. 8,20,384 |
| Undisclosed income offered by the assessee u/s 69 of the I.T.Act, 1961 | Rs.28,50,000 |
| Income-tax thereon: | Rs. 9,97,500 |
| Add: S.C. @ 2% | Rs. 19,950 |
| Total: | Rs.10,17,450 " |

While completing the assessment, the Assessing Officer restricted the business loss to Rs.8,20,384/- and failed to set off the same against the income from other sources disclosed by the assessee-firm. There was no reason given by the Assessing Officer to deny the set off of the business loss against the income declared under the head "other sources". Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeal and directed the Assessing Officer to set off the business loss against the income from other sources and allowed the appeal. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal also confirmed the order of the C.I.T.(A) and dismissed the appeal.

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3. Learned Standing Counsel appearing for the Revenue submitted that during the course of survey under Section 133A of the Act, it was noticed that the assessee made certain cash payment to the bank out of which Rs.28.50 lakhs could not be explained. The same was surrendered voluntarily for taxation. Hence the Assessing Officer was right in denying the setting off of the loss. Later, the assessee filed Return of income declaring a business loss of Rs.11.95 lakhs. The Assessing Officer determined the business loss at Rs.8,20,384/- and did not allow the set off of the loss against the undisclosed income of Rs.28.50 lakhs. Hence the order of the Assessing Officer is in confirmity with law.

4. Heard the counsel. The Assessing Officer has not given any reason whatsoever to deny the set off of the business loss against the income declared under the head "other sources". Section 71 deals with set off loss against income under any other head. After setting off losses against the income under the same head, if the net result is still a loss, the assessee can set off the said loss under Section 71 of the Act against income of the same year under any other head, except for losses which arise under the head "capital gains". The income tax is only one tax and levied on the sum total on the income classified and chargeable under the various heads. Section 14 has classified different heads of income and income under each head is separately computed. Income which is computed in accordance with law is one income and it is not a collection of distinct tax levied separately on each heads of income and it is not an aggregate of various taxes computed with reference to each of the different sources separately. There is only one assessment and the same is made after the total income has been ascertained. The assessee is subject to income-tax on his total income though his income under each head may be well below the taxable limit. Hence the loss sustained in any year under any heads of income will have to be set off against income under any other head. In this case, the Assessing Officer made addition of Rs.28,50,000/- as undisclosed income under Section 69 of the Act. Once the loss is determined, the same should be set off against the income determined under any other head of income. In the assessment, no reasons were given by the Assessing Officer to deny the benefit of Section 71 of the Act. The benefit provided under Section 71 of the Act cannot be denied and the learned Standing Counsel appearing for the Revenue is also unable to explain or give reasons why the assessee is not entitled to the benefit of Section 71 of the Act. The reasons given by the Tribunal are based on valid materials and evidence and the same is in accordance with the provisions of Section 71 of the Act. We find no error or legal infirmity in the impugned order.

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5. Under these circumstances, we are of the view that no substantial question of law arises for consideration in this tax case and hence the tax case is dismissed. No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. THE ASSISTANT REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
II FLOOR, RAJAJI BHAVAN, BESANT NAGAR,
CHENNAI.

2. THE COMMISSIONER OF INCOME TAX

APPEALS IX, 121 M.G. ROAD, CHENNAI-34.

3. THE INCOME TAX OFFICER,
WARD VI (3) CHENNAI -034.

+ One cc to M/s Pusya Sitataman, SR. Standing Counsel Income Tax SR 22511

SSV (co)

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